

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201505505	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/03/2015 9:45 PM	Location of Incident: 87-15 Beach Channel Drive	Precinct: 100	18 Mo. SOL 1/3/2017	EO SOL 1/3/2017	
Date/Time CV Reported Sun, 07/05/2015 12:38 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 07/05/2015 12:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			QS NARC
2. SGT Ramiro Ruiz	05320	939384	QS NARC
3. DT3 Edwin Estrada	02015	933767	QS NARC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Mccready	02772	932995	QS NARC
2. DT3 Raven Bollingdavis	02888	938082	QS NARC
3. DT3 Jason Jones	06496	940316	QS NARC

Officer(s)	Allegation	Investigator Recommendation
A.SGT Ramiro Ruiz	Abuse: Sgt. Ramiro Ruiz stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Ramiro Ruiz	Abuse: Sgt. Ramiro Ruiz stopped § 87(2)(b)	
C.DT3 Edwin Estrada	Abuse: Det. Edwin Estrada refused to provide his name to § 87(2)(b)	
D.SGT Ramiro Ruiz	Abuse: Sgt. Ramiro Ruiz arrested § 87(2)(b)	
E. An officer	Force: An officer used a chokehold against § 87(2)(b)	
F. An officer	Force: An officer restricted § 87(2)(b) s breathing.	
G. An officer	Abuse: An officer searched § 87(2)(b) s phone.	

### Case Summary

On July 3, 2015, at approximately 9:45 p.m., Sgt. Ramiro Ruiz of Queens South Narcotics stopped § 87(2)(b) during the stop of a cab for a VTL at 87-15 Beach Channel Drive in Queens (**allegations A and B**). During their interaction, Det. Edwin Estrada of Queens South Narcotics refused to provide his name to § 87(2)(b) (**allegation C**). § 87(2)(b) was arrested and charged with § 87(2)(b) (**allegation D**) (Board Review 01). After being placed in handcuffs, an officer allegedly used a chokehold against § 87(2)(b) restricting his breathing (**allegations E and F**). When § 87(2)(b) was released from central booking, he realized that an officer allegedly searched through his phone and deleted his video of the incident (**allegation G**). § 87(2)(b) was able to retrieve the video footage of this incident (Board Reviews 02 and 03).

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest and subsequent criminal case, this case was not suitable for mediation.
- As of November 17, 2015, § 87(2)(b) has not filed a notice of claim regarding this incident.
- § 87(2)(b), § 87(2)(c)

### Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (Board Review 05).
- Sgt. Ruiz has been a member of the NYPD for 10 years, has had 20 prior CCRB allegations against him involving 10 cases with one substantiated allegation. In CCRB #201311028, an allegation that Sgt. Ruiz unlawfully arrested an individual was substantiated and formalized training was recommended. He received instructions from the NYPD (see officer history).
- Det. Estrada has been a member of the NYPD for 11 years, has had 13 prior CCRB allegations against him involving four cases with two substantiated allegations. In CCRB #201105441, allegations that Det. Estrada stopped and frisked an individual without justification were substantiated and instructions were recommended. Det. Estrada received no disciplinary action from the NYPD (see officer history).

### Potential Issues

- § 87(2)(b) was in the prisoner van at the time of the incident; however, she stated that she did not witness § 87(2)(b) get placed in handcuffs or see any officers do anything to him that she thought was wrong (Board Review 06).

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- Sgt. Ruiz was the supervisor on scene; § 87(2)(g)

- § 87(2)(b) alleged that after he was placed in handcuffs, he was taken to the back of the cab by Det. Jones. He argued with Det. Jones because he wanted to stand up but Det. Jones wanted him to sit on the back of the cab. An officer grabbed § 87(2)(b)'s throat and squeezed it for approximately ten seconds. His breathing was slightly restricted. In his phone statement, § 87(2)(b) stated that did not recall this officer's face. He stated that it may have been the same officer who removed him from the car. In his sworn statement, he described the officer who removed him from the car differently from the one who used a chokehold against him. He could only describe the officer who used a chokehold against him as a 6'1-6'2" tall Hispanic male. According to the roll call (Board Review 07) and officer testimony, the only two Hispanic males on scene and to interact with § 87(2)(b) were Sgt. Ruiz and Det. Estrada. § 87(2)(b) described Det. Estrada and Sgt. Ruiz separately from the officer who used a chokehold against him. None of the officers interviewed saw an officer use a chokehold against § 87(2)(b). Det. Jones stated that he had sight of § 87(2)(b) the entire time he was at the back of the cab in handcuffs up until the time he was placed in the prisoner van and no officer grabbed him by his neck. § 87(2)(g)

Initially he stated that he did not "remember the officer's face." He later stated that it could have been the same officer who pulled him out of the vehicle. In his sworn statement, he changed his statement to provide a brief description of the officer who used a chokehold against him to include his race and height. He also made it clear that, unlike he said previously, this officer was a different officer from the officer who pulled him out of the vehicle. § 87(2)(g)
- § 87(2)(b) alleged that when he was released from central booking, he realized that the video of the incident had been deleted from his cell phone; however, he was able to retrieve it. Although the video had been deleted while in police custody, § 87(2)(b) did not see which officer deleted it. None of the officers interviewed admitted to deleting his video footage, searching his phone or seeing another officer do so. § 87(2)(g)

**Allegation A- Abuse of Authority: Sgt. Ramiro Ruiz stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that the cab that § 87(2)(b) was a passenger in was stopped by officers.

The cab driver, § 87(2)(b) admitted that his cab was stopped for a broken taillight and had no complaint involving this. § 87(2)(b) also had no complaint regarding the stop of the cab.

§ 87(2)(g)

**Allegation B- Abuse of Authority: Sgt. Ramiro Ruiz stopped § 87(2)(b)**

It is undisputed that officers stopped § 87(2)(b) who was the passenger in a cab, during a car stop of the cab for a VTL.

§ 87(2)(b) stated that he was in a cab when the cab was pulled over for a broken taillight. § 87(2)(b) asked Det. Estrada what was going on but did not receive an answer. He asked whether he was in trouble or being arrested and was told no. He asked whether he was free to go then. Det. Estrada told him that he was not free to go because the cab was being pulled over. § 87(2)(b) told him that he did not want to be in the cab anymore and wanted to leave. Det. Estrada told him to hold on and to give them a second. Det. Estrada opened the door and asked him to step out of the car. § 87(2)(b) was arrested for § 87(2)(b) (Board Review 08).

Sgt. Ruiz stated that he observed a male enter and quickly exit the vehicle. The vehicle took off at a high rate of speed, making unsafe and improper lane changes. Upon approaching the vehicle, § 87(2)(b) asked why they stopped him and what was going on. He continuously moved around, holding his left hand to his side out of Sgt. Ruiz's view. § 87(2)(b) continued to be loud and boisterous asking whether he could leave. He was told that he could not leave because the vehicle was being detained and once the investigation was concluded, he would be free to go. He was told multiple times that they were conducting an investigation and that he needed to remain seated. Sgt. Ruiz stated that during a car stop, passengers are not free to leave.

Det. Estrada stated that he observed a male jump into the back seat of a car that was already occupied and then jump back out of the car a few blocks down. Wanting to inquire into this, they stopped the vehicle. Upon approach, Det. Estrada identified himself as the police and explained to the passengers that they were conducting an investigation and as soon as they were done, they would be on their way. Det. Estrada asked the passengers if they knew each other and they responded "no." Det. Estrada did not ask them about the male passenger who had jumped in and out of the car. § 87(2)(b) who smelled of alcohol, began to get loud and asked them why they were being stopped. Det. Estrada told him that things would be explained as soon as they were done. He stated that they were mainly inquiring of the driver as to what had happened to make sure that a drug transaction had not taken place. § 87(2)(b) had his cell phone in his right hand and another object in his left hand which was cupped behind him. Det. Estrada did not see any part of the object and had no suspicion as to what the item was. § 87(2)(b) repeatedly moved his left hand from his lap, to his thigh and finally behind him. § 87(2)(b) continued to ask to leave and pulled the handle in attempt to exit the vehicle. Det. Estrada explained to him multiple times that he could not leave because they were conducting an investigation.

Det. McCready stated that he observed a vehicle exit traffic without signaling. An individual exited the vehicle and the vehicle re-entered traffic again without signaling. He pulled the vehicle over for this traffic infraction. As he approached, he realized that the vehicle was a cab. While talking to the driver, he observed § 87(2)(b) moving his hands and his body to the side and towards the door. He had objects in his hands and wanted to exit the vehicle. Det. McCready did not recall what those objects were. § 87(2)(b) asked questions, became loud, and attempted to exit the vehicle. § 87(2)(b) was told that an investigation was taking place and that he would be able to go after the vehicle stop was done.

Det. Jones and Det. Bolling-Davis arrived after the car had been stopped. Det. Jones stated that when they arrived, Sgt. Ruiz was talking to § 87(2)(b). He could not hear what they were saying but assumed that Sgt. Ruiz was explaining the situation to § 87(2)(b). § 87(2)(b) was slightly agitated that the vehicle was stopped and pushed the door handle in attempt to open the door. Det. Ruiz told him to relax and hold on. Det. Bolling-Davis stated that when she arrived, § 87(2)(b) had headphones on and a phone in his hand. He was talking loudly but she did not know whether he was talking on his phone or to the officers. § 87(2)(b)

was loud, used profanity and refused to answer questions. He did not care about the investigation or the reason for the stop and just wanted to move on. He was moving around a lot but Det. Bolling-Davis did not know what he was doing. Aside from his phone, she did not see anything else in his hand and there was nothing that caused her to fear for her safety at this point. Neither Det. Jones nor Det. Bolling-Davis knew why the car had been stopped.

All of the officers agreed that, generally, passengers are not allowed to leave during a car stop.

Video footage corroborated § 87(2)(b) s statement that he asked multiple times whether he was free to leave and was told no by Det. Estrada.



201505505\_20151116\_1553\_DM.mp4

Officers may not ask passengers of a cab wishing to leave for identification or otherwise detain them in the absence of reasonable suspicion of criminal activity. People v. Abad, 98 N.Y.2d 12 (2002). Passengers are free to leave when there is no suspicion against them. US v. Pena-Lopez, 12 cr. 00267, U.S. Dist. Lexis 32353 (2013). Innocuous behavior alone does not generate a founded or reasonable suspicion that a crime is at hand. People v De Bour, 40 N.Y.2d 210 (1976). (Board Review 11)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C- Abuse of Authority: Det. Edwin Estrada refused to provide his name to**

§ 87(2)(b)

§ 87(2)(b) alleged that while he was in the cab attempting to get information, he asked Det. Estrada for his name. Det. Estrada did not answer him.

Video footage from § 87(2)(b)'s cell phone revealed that § 87(2)(b) said to Det. Estrada, "Excuse me officer, what's your name?" (see video #201505505\_20151116\_1553\_DM.mp4). Det. Estrada responded, "Are you talking to me or talking to your phone?" § 87(2)(b) responded, "I'm talking to the officer." Det. Estrada replied, "When you put down your phone then you're talking to me." § 87(2)(b) repeated that he was talking to "the officer." Det. Estrada said, "Which one? There's a couple of us?" § 87(2)(b) stated, "You. I'm talking to you. The Hispanic guy." Det. Estrada said, "Okay, go ahead." § 87(2)(b) asked Det. Estrada if he was being held up and Det. Estrada proceeded to explain that he was being held up because he was in a cab and the cab was being held up. The video continued for more than 50 seconds after § 87(2)(b)'s request for Det. Estrada's name and during this time, Det. Estrada never provided it to him.

When asked during his CCRB statement whether § 87(2)(b) asked his name, Det. Estrada stated, "I was outside. Inside, I'm watching the driver, I'm watching the lady, I'm watching the guy and he was talking but I'm not sure he was asking something. I'm not going to keep repeating myself. Upfront I already told him what I was doing, a car stop. And at that point, I did not repeat myself afterwards." When asked the question again, Det. Estrada stated that he did not recall. Det. Estrada stated that he provided his name and shield number to § 87(2)(b) after he was placed in handcuffs. After watching the video of § 87(2)(b) asking his name inside of the cab, Det. Estrada stated that he did not provide his name to § 87(2)(b) at that point because they were in the middle of an investigation and he had to focus on the car stop and watching his partners' backs (Board Review 10).

Patrol Guide Procedure 203-09 states that an officer must courteously and clearly state their name, rank, shield and command to anyone who requests you to do so (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D- Abuse of Authority: Sgt. Ramiro Ruiz arrested** § 87(2)(b)

It is undisputed that § 87(2)(b) was arrested and charged with OGA and disorderly conduct.

As discussed above in § 87(2)(b)'s statement and as seen in the video he provided (see video #201505505\_20151116\_1553\_DM.mp4), after questioning the officers as to what was going on and asking if he was free to leave, § 87(2)(b) was asked to step out of the car and immediately placed in handcuffs.

Sgt. Ruiz explained that prior to being removed from the car, § 87(2)(b) was interfering with the car stop and their investigation, thus committing OGA. He stated that after exiting the vehicle, he was placed under arrest for a combination of his conduct in the vehicle and for stepping out of the vehicle. Prior to this he stated that he did not know whether § 87(2)(b) or one of his officers opened the door. Det. Estrada stated that § 87(2)(b) was arrested for OGA for distracting them from obtaining information during the car stop and for being non-compliant by attempting to leave the vehicle when they told him not to. Det. Jones stated that he did not see § 87(2)(b) do anything in the car that he could've been arrested for. Det. McCready stated that he made the decision to place § 87(2)(b) under arrest for OGA and disorderly conduct because he inhibited him from conducting the vehicle stop and receiving the trip sheet from the driver. Det. Bolling-Davis stated that § 87(2)(b)'s demeanor in the vehicle, causing the officers to focus on him instead of on the reason the car was stopped, is why he was arrested for disorderly conduct.

A person is guilty of obstructing governmental administration in the second degree when he intentionally obstructs, impairs, or perverts the administration of law or other government function or prevents or attempts to prevent a public servant from performing an official function by means of intimidation, physical force or interference. New York State Penal Law § 195.05. New York State Penal Law 240.20 states that a person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof in a public place, the individual makes unreasonable noise. The mere expression that one feels aggrieved by the police—even when uttered in a loud voice—cannot constitute an offense. People v. Square, 20 Misc.3d 1126A (N.Y. Cty. Crim. Ct. 2008) (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

**Allegation E- Force: An officer used a chokehold against § 87(2)(b)**

**Allegation F- Force: An officer restricted § 87(2)(b)'s breathing.**

**Allegation G- Abuse of Authority: An officer searched § 87(2)(b)'s phone.**

As discussed above, the investigation was unable to identify which officer allegedly used a chokehold against § 87(2)(b) restricting his breathing § 87(2)(g)

Also as discussed above in the officer

identification section, the investigation was unable to identify the officer who searched § 87(2)(g) s phone. § 87(2)(g) § 87(2)(g)

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Squad: 2

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date